IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5025 of 1997

Between:

The Thirupathi Cotton Mills (NTC) Rep by its General Secretary T.Venkata Reddy Employees Union (Reg No.1248) S.N.Puram, Renigunta.

..... PETITIONER

AND

1 The Thirupathi Cotton Mills Rep by its General Manager Others
Renigunta, Chittoor Dist.
2 The Chairman and Managing Director
National textiles Corporation APKK & M) 19/2, Shanthinagar, K.H.Road
Bangalore.
3 The Asst.Commissioner of Labour & Conciliation Officer
Tirupathi , Chittoor Dist.

.....RESPONDENTS

THE HON'BLE MS. JUSTICE G.ROHINI

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WRIT PETITION NO.5025 OF 1997

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ORDER :

Heard the learned Counsel for the petitioner Sri K. Somakonda Reddy and Sri P. Nageswar Sree for the respondents 1 and 2 and perused the material on record.

This writ petition is filed seeking a declaration that the action of the respondents in not regularizing the services of K. Noorjahan Reddy and T. Eswaraiah as arbitrary

and illegal and for a consequential direction to the respondents to implement the conciliation settlement dated 10-6-1996 arrived at under Section 12 (3) of the Industrial Disputes Act, 1947 by regularizing the services of the said K. Noorjahan Reddy and T. Eswaraiah.

The writ petitioner claims to be a registered Employees Union. In the affidavit filed in support of the writ petition, it is stated that two employees namely Sri K.Noorjahan Reddy and Sri T.Eswaraiah along with one Smt. V.Radhika were appointed in D.C.L. staff category by the first respondent Cotton Mills in the year 1991. They were appointed on compassionate grounds. All of them were qualified to be appointed as clerks. It is further stated that Sri T.Eswaraiah was a candidate belonging to Scheduled Caste. It is alleged that the services of Smt. V.Radhika were regularized on 29-04-1993 even though she was not qualified. Similarly the services of one Sri K.Ravi Kumar, D.C.L. Driver were also regularized on 29-04-1993 even though he was not in the panel for appointment. The grievance of the petitioner Union is that the legitimate claims of K.Noorjahan Reddy and T.Eswaraiah, who were fully qualified, were ignored by the respondents and their services have not been regularized so far without there being any justifiable reason. It is alleged that the respondents also failed to follow the roster points in the matter of appointment, promotion and etc., and in spite of clear vacancies available for the scheduled caste candidates as per the roster, the claims of K.Noorjahan Reddy and T.Eswaraiah were not considered. It is further stated that a settlement was entered between the management and the staff members in the presence of the Assistant Commissioner of Labour and Conciliation Officer, Tirupati, Chittoor District on 10-06-1996, under which it was agreed that the total strength of the clerical staff should be 21 i.e., 19 permanent and 2 D.C.Ls to carry out the work of Mills in three shifts per day. According to the petitioner Union, the said settlement arrived at under Section 12(3) of the Act is binding on the respondents and therefore the respondents are bound to regularize the services of the two employees viz., K.Noorjahan Reddy and T.Eswaraiah. Since the management failed to implement the settlement dated 10-06-1996, this writ petition is filed seeking the above reliefs.

On behalf of the 1st respondent, a counter-affidavit has been filed stating that 1st respondent Company is engaged in manufacture and sale of Yarn, having its factory

at Renigunta. However, the 1st respondent Company had become sick and the same was taken over by the National Textile Corporation (APKK & M) Limited , Bangalore in 1974. The said N.T.C. (APKK & M) Limited is a subsidiary Corporation of National Textile Corporation Limited, Delhi. It is also stated that on a reference made by the Government of India referring the N.T.C. Units to B.I.F.R. a case was registered as Case No.PSU(C) 534.92 which was still pending before B.I.F.R. and a scheme for rehabilitation was being worked out. In the circumstances, the Company is not in a position to bear any financial burden and therefore the claim of the petitioner union is liable to be rejected. It is also stated that since the 1st respondent mill was not functioning properly and incurred continuous losses, the Ministry of Textiles introduced the Voluntary Retirement Scheme to all the units of N.T.C. (APKK & M) Limited. The 1st respondent mill originally had the strength of 466 prior to introduction of V.R.S. which included N.T.C. Staff and Officers – 16, Mill Staff-18 + 2 Daily Clerks, 9 Security Guards, 369 Permanent Workmen, 41 Badli Workmen and 6 Daily Casual Labour, 5 ITI Trainees. After implementing the V.R.S. Scheme, majority of the workmen have left and the strength has come down to 111. It is also stated that since one of the conditions of V.R.S. was that the Company shall not fill up the vacancies which arise in lieu of opting the V.R.S. by employees, the said posts stood abolished. The fact that there was a Settlement dated 10-6-1996 between the Management and the Staff Association under Section 12 (3) of the Industrial Disputes Act, 1947 before the Assistant Commissioner of Labour, Tirupati, was admitted, however it was stated that there was no restriction to reduce the strength of the employees. It is also stated that subsequent to the said settlement, the V.R.S. has been introduced in October, 1996 which clearly prohibits the filling-up of vacancies caused due to the employees who opted for V.R.S. It is also stated that from 12-12-1996 the entire manufacturing activity of the mills was closed and came to a standstill and no manufacturing activity was going on in the company and the permanent employees were being engaged in any work and thus are being paid only idle wages. Therefore, in view of the financial constraints of the company and in view of the absence of any manufacturing activity, the question of regularizing the services does not arise. It was also stated that the Ministry of Textiles had issued ban orders on recruitment of vacant posts vide Circular dated 13-7-1992 and as such no recruitment can be done. It was also stated that K. Noorjahan Reddy and T. Eswaraiah and Smt. V. Radhika were appointed as Daily Casual Labour Clerks

(DCL) on 14-10-1991 on the basis of the need and exigency of the work existing at that time. Subsequently, Smt. V. Radhika was taken on regular basis with effect from 1-4-1993 as Clerk-cum-Typist on compassionate grounds as her husband died while in service. Similarly, Sri K. Ravi Kumar who was initially engaged as Daily Casual Labour was subsequently appointed on regular basis in the year 1992 following the due recruitment procedure. The allegation that Smt V. Radhika and K. Ravi Kumar were regularized by overlooking the claims of Noorjahan Reddy and Eswaraiah was denied and it was stated that no panel of appointment was ever prepared as pleaded by the petitioner. It was also stated that the management has fully implemented the terms and conditions of the settlement dated 10-6-1996 and in terms of the said settlement the vacancies caused due to retirement of some of employees were rationalized and the same do not exist. Thus, it was pleaded that there are no existing vacancies and therefore the claim of the petitioner is untenable and the writ petition is liable to be dismissed.

However, on behalf of the petitioner, a detailed affidavit in Reply dated 25-10-2004 has been filed stating that the counter-affidavit was sworn to on behalf of the 1st respondent on 6-7-1998 and the same does not reflect the present state of affairs. It was explained in the Reply affidavit that subsequently the BIFR has decided the reference i.e., Case No.534 of 1992 and sanctioned the scheme to rehabilitate the 1st respondent mills along with 14 other mills. In pursuance of the said scheme, the 1st respondent mills was reopened on 22-3-2004 and as on today the same is running. It was also stated that as per the scheme framed by BIFR, the strength as on 31-3-2001 was only 96 employees and since the required strength was 760, the shortfall was 331 as can be seen from the report submitted by the BIFR. It was also categorically stated that as of today there are 151 workers in the mill and that as per the sanctioned scheme there is a shortfall of 60% to 80% of the workforce. It was also stated that both Noorjahan Reddy and Eswaraiah were also appointed on compassionate grounds and therefore the ban on new recruitment does not apply to their cases and their services are bound to be regularized in terms of the settlement arrived at under Section 12 (3) of the Industrial Disputes Act, 1947.

The abovesaid averments of the petitioner in the Reply affidavit asserting that the 1st

respondent Unit has been revived by virtue of the orders of the BIFR and that the same has been functioning from 22-3-2004 have not been denied by the learned Counsel appearing for the 1st respondent. As rightly pointed out by the learned Counsel for the petitioner, the counter-affidavit was sworn to on behalf of the 1st respondent long back in the year 1998 and as can be seen from the affidavit in Reply, many far-reaching changes have taken place thereafter. Admittedly, the 1st respondent mill has been functioning as of today and as per the sanctioned scheme of the BIFR placed before this Court, it appears that there was shortage of 331 employees.

The learned Counsel for the petitioner vehemently contends that as per the settlement dated 10-6-1996, the management has agreed for the clerical strength of 21 (19 + 2) and since after the said settlement, several employees have retired from service on attaining the age of superannuation, the services of Sri K.Noorjahan Reddy and Sri T. Eswaraiah who have been working from 1991 ought to have been regularized.

Section 18 of the I.D. Act clearly has specified the persons on whom the settlements and awards are binding. Sub-section (3) states that the settlement arrived at in the course of conciliation proceedings under the Act shall be binding on all the parties to the industrial dispute. Admittedly, the settlement dated 10-06-1996 was arrived at between the petitioner Union and the Management under Section 12(3) of the Act. As such, as rightly contended by the learned Counsel for the petitioner the same is binding on the respondents.

The learned Counsel for the petitioner has also brought to my notice the list of existing employees which was annexed to the settlement dated 10-06-1996. The learned Counsel for the petitioner states that as per the settlement dated 10-06-1996 it is obligatory on the part of the respondents to maintain the total strength of clerical staff at 21 and among them 19 should be permanent. He contends that the respondents are bound to regularize the services of Sri K.Noorjahan Reddy and Sri

T.Eswaraiah against the existing vacancies in terms of the settlement dated 10-06-1996 and the inaction on their part is arbitrary and illegal.

As expressed above, since the settlement dated 10-06-1996 is binding on the management, they are bound to implement the terms of the said agreement. The 1st respondent does not dispute the said fact, but it was only contended in the counter-affidavit that the 1st respondent had become sick and a case was pending before the BIFR and that as per the Voluntary Retirement Scheme introduced by the Ministry of Textiles, the vacancies subsequently arose were abolished and that the same cannot be filled up due to the ban imposed on fresh recruitment. However, it is not disputed by the learned Counsel for the 1st respondent that as of today the 1st respondent mill has been revived and under the Rehabilitation Scheme, the manufacturing process has commenced from 22-3-2004. In the circumstances, there cannot be any valid objection from the 1st respondent to implement the terms of the settlement dated 10-6-1996. However, it is made clear that this Court has not expressed any opinion as to the existence of the vacancies in the 1st respondent mill as of today. I am also not inclined to express any opinion with regard to the entitlement of Sri K.Noorjahan Reddy and Sri T.Eswaraiah for regularization of their services and for absorption against the vacancies said to be existing. However, since the 1st respondent is bound by the settlement dated 10-6-1996, I deem it appropriate to dispose of the Writ Petition with a direction to the respondents to implement the settlement dated 10-06-1996 and to consider the claims of Sri K.Noorjahan Reddy and Sri T.Eswaraiah for regularization of their services in the posts of Clerks as per the terms of settlement under Section 12(3) of the Act, dated 10-06-1996 subject to availability of the vacancies and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. It is stated that by virtue of the interim orders granted by this Court, both the said employees viz., K.Noorjahan Reddy and T.Eswaraiah are being continued as Shift Clerks. If that be so, till the aforesaid exercise is completed, they shall be continued in the said posts.

The Writ Petition is accordingly disposed of. No costs.

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5th August, 2005.

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